

MAY 18 2007

REMARKS

Claims 21, 24-84, 86-116 are pending in the application. Claims 1-20, 36-40, 44-47, 52-54, 57-74, 79, 80, 86-93 and 96 have been withdrawn from consideration. Claims 1-20 and 85 have been canceled, without prejudice, as directed to a non-elected invention. Claims 21, 22, 30, 31, 33-35, 41-45, 48-50, 55, 56, 58, 75-78, 94 and 95 were rejected. Claims 23-29 and 81-84 were objected to.

Claim Rejections under 35 U.S.C. §102 and Allowable Subject Matter

Claims 21, 22, 30, 31, 33-35, 41-45, 48-50, 55, 56, 58, 75-78, 94 and 95 were rejected under 35 U.S.C. §102(b) as being anticipated by McRae et al. (US 3,607,417). Claim 23-29 and 81-84 were indicated allowable if rewritten in independent form. In addition, the previously elected species has been indicated allowable.

The indication of allowable subject matter is gratefully acknowledged. Applicants believe that the pending claims are patentable over the cited McRae reference. However, in order to expedite the issuance of a patent for the subject matter indicated allowable, the claims have been amended to place the claims and other subject matter indicated allowable in independent form. This amendment is made without addressing the merits of the §102 rejection which Applicants intend to do in a continuation application directed, at least in part, to the subject matter of the presently rejected claims.

With regard to the claims indicated allowable, claims 23-29 relate to the battery cell of claim 21, wherein the separator layer comprises a micro-porous polymer semi-permeable membrane impregnated with a non-aqueous anolyte; and claims 81-84 relate to the battery cell of claim 21, wherein the anolyte further comprises a monomer for a polymer that is insoluble or minimally soluble in water and the catholyte comprises a polymerization initiator for the monomer. The elected species indicated as allowable subject matter is the battery cell of claim 21 wherein the anode material is lithium, the impervious ionically conductive layer is the glass ceramic of claim 32 and the cathode structure is sea water with a nickel current collector. The pending claims have been amended to present each of these indicted allowable subject matters in independent form, as follows:

With regard to allowable claims 23-29: The limitations of allowable claim 23 have been incorporated into claim 21, and original claims 22 and 23 have been canceled and the dependency of original claims 24 and 28 have been adjusted accordingly. The amended claim 21 is now submitted to be original claim 23 in independent form, and therefore to be allowable. Claims 30, 31, 33-35, 41-45, 48-50, 55, 56, 58, 75-78 depend either directly or indirectly from amended claim 21 and are submitted to be allowable for at least the same reasons. Also,

independent method claim 94 has been amended in a manner analogous to claim 21 to recite the same limitations as indicated allowable with respect to claims 23-29. Accordingly, claims 94, as amended, and its dependent claim 95, are submitted to be allowable for at least the same reasons.

With regard to allowable claims 81-84: The limitations of allowable claim 81 have been incorporated into claim 21 and presented as new claim 97. Accordingly, new claim 97 is submitted to be original claim 81 in independent form, and therefore to be allowable. New claims 98-100, reciting as in original claims 82-84, respectively, have been added to depend from claim 97. Claims 98-100 thus are submitted to be allowable for at least the same reasons.

With regard to the elected species indicated as allowable subject matter, the species recitation (wherein the anode material is lithium, the impervious ionically conductive layer is the glass ceramic of claim 32 and the cathode structure is sea water with a nickel current collector) has been incorporated into claim 21 and presented as new claim 101. Accordingly, new claim 101 is submitted to be allowable. New claims 102-116, reciting as in original claims 22-26, 28, 29, 75-78 and 81-84, respectively, have been added to depend from claim 101. Claims 101-116 thus are submitted to be allowable for at least the same reasons.

Accordingly, all pending claims are believed to now be allowable.

Double Patenting

Claims 21-31, 33-35, 41-45, 48-50, 55, 56, 58, 75-78, 81-84, 94 and 95 were provisionally rejected on the ground of obviousness-type double patenting as being unpatentable over claims 23-25 of commonly assigned co-pending Application 11/245,472 (US 2006/0078790) by Nimon et al. ("Nimon"). The filing of a Terminal Disclaimer would obviate this rejection. However, as submitted in the prior response, Nimon is a later filed application, so any such Terminal Disclaimer ultimately found necessary would be more appropriately filed in the later filed application. The Examiner's confirmation in the Office Action that this double patenting rejection will be removed if it remains the only rejection in the application and Nimon has not been indicated allowed. Pending this conclusion, it is believed that no further action is required of Applicants on this issue.

Withdrawn Claims

To the extent that claims previously withdrawn can be rejoined with the claims under consideration based on the subject matter indicated allowable, such rejoinder is respectfully requested. Otherwise, if the pendency of withdrawn claims is the only remaining impediment to allowance of the application, authorization is given to cancel the withdrawn claims, without prejudice.

RECEIVED
CENTRAL FAX CENTER

MAY 18 2007

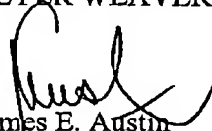
Other Amendments

A typographical error has been corrected in claim 84.

Conclusion

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below. If any fees are due in connection with the filing of this amendment, the Commissioner is authorized to charge such fees to Deposit Account 500388 (Order No. PLUSP040).

Respectfully submitted,
BEYER WEAVER LLP



James E. Austin
Reg. No. 39,489

P.O. Box 70250
Oakland, CA 94612-0250
(510) 663-1100